IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WP(C).No. 3885 of 2007(K)

AGAINST THE ORDER IN IA 4433/06 IN
OS.82/2000 of ADDL.SUB COURT,PARAVUR

.....

PETITIONER:

KUNJAMMA, AGED 62 YEARS,
W/O. LATE ISSAC, POKKATTU HOUSE,
AIRAPURAM P.O., KUNNAKKURUDY, PERUMBAVOOR,
PIN-683 541.

BY ADV. SRI.P.T.DINESH
SMT.SUSMITHA P.MALLAYA

RESPONDENTS:

---

1. ELAMMA, W/O. VARGHESE,
KANNANGANMALIL HOUSE, VALAYANCHIRANGARA P.O.,
PERUMBAVOOR.

2. YACOB,
PAPPALIL HOUSE, AIRAPURAM P.O.,
PERUMBAVOOR.

3. ELDHO P.Y., S/O. YACOB,
PAPPALIL HOUSE, AIRAPURAM P.O., PERUMBAVOOR.

4. VARGHESE P.Y.,S/O.YACOB,
PAPPALIL HOUSE, AIRAPURAM P.O., PERUMBAVOOR.

5. RAJU P.Y., S/O. YACOB,
PAPPALIL HOUSE, AIRAPURAM P.O., PERUMBAVOOR.

6. ELDOSE, S/O. LATE ISSAC,
POKKATTU HOUSE, KUNNAKURUDI, AIRAPURAM P.O.,
PERUMBAVOOR.

7. JOSEPH, S/O. LATE ISSAC,
POKKATTU HOUSE, KUNNAKURUDI,
AIRAPURAM P.O., PERUMBAVOOR.

8. JOY, S/O. VARKEY,
KAKKATHIL HOUSE, KUNNAKURUDI,
AIRAPURAM P.O., PERUMBAVOOR.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN
SRI.S.GOPAKUMARAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the judgment dated 18-7-2006 in W.P.(C) No.30269/05.

Ext.P2: True copy of the counter affidavit filed by the petitioner in O.S.No.82/2000.

Ext.P3: True copy of the I.A.No.4433/06 and affidavit in O.S.82/2000 dated 21.12.2006.

Ext.P4: True copy of the notice dated 25.1.2007 by Advocate P.A. Hilal.

RESPONDENT'S EXHIBITS:

Ext.R4(a): True photostat copy of the order dated 8.2.2005 passed by this Hon'ble court in R.P.No.46 of 2005 in R.S.A.No.1084/04.

Ext.R4(b): True photostat copy of the judgment dated 18.7.2006 passed by this Hon'ble Court in W.P.(C)No.30269 of 2005.

Ext.R4(c): True photostat copy of the judgment dated 14.12.2006 passed by this Hon'ble Court in W.P.(C)No.33274 of 2006.

Ext.R4(d): True photostat copy of the counter affidavit in I.A.No.4433 of 2006 in O.S.No.82 of 2000, on the file of the Additional Sub Court, North Paravur, fled by the respondents 1 to 5 herein.

// True copy //

P.A. to Judge

jes

K.P.BALACHANDRAN, J.

- -

W.P.(C)NO.3885 OF 2007

- -

Dated this the 5th day of March 2007

JUDGMENT

Adv. Sri.P.N. Ramakrishnan Nair appears for respondents 1 to 5 and Adv. Sri. Abraham appears for respondents 6 and 7. 8th respondent is reported to be out of India but it is submitted that he is the assignee of the original first defendant/Issac who is the husband of the petitioner and father of respondents 6 and 7. Yet 8th respondent was not contesting either in the first appeal or in the final decree proceedings. Hence, notice to 8th respondent is dispensed with.

2. This writ petition is filed by the additional 5th defendant in O.S.82/2000 pending on the file of Additional Sub Court, North Paravur. The prayers in the writ petition are to quash the order issuing commission to effect division of the properties by metes and bounds in the final decree proceedings vide order on I.A.3769/04 or in the alternative to give effect to the said order after disposal of the application filed by the petitioner. It is submitted by counsel for the petitioner that final arguments in Ext.P3 were heard by the court below and that Ext.P3 is taken for orders. Counsel for respondents 1 to 5 contends that there is no meaning in awaiting for final orders

on Ext.P3 application and the said order attaining finality and that respondents 1 to 5 are prepared to take the risk if at all Ext.P3 is finally allowed and shares will have to be reallotted by issuing commission afresh consequent on orders passed on Ext.P3. He further submits that no injury at all is to be caused to the petitioner even in case the commission goes and inspects the property and assesses the details so as to enable the court to pass a final decree in terms of the preliminary decree as it now stands. It is also seen from Ext.R4 order of this court that this court had on an earlier occasion directed the Sub Court, North Paravur to issue sufficient directions to the Commissioner to expedite the work and submit report and to dispose of the final decree application thereafter considering the objections raised and to dispose of the final decree application as expeditiously as possible.

3. In the circumstances, the request of the petitioner to withhold execution of commission order till Ext.P3 is disposed of finally is not tenable.

This writ petition in the circumstances is dismissed.

K.P.BALACHANDRAN, JUDGE

jes